

United States District Court

WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA

V.

ORDER OF DETENTION PENDING TRIAL

Rigoberto Rubio-Castillo

Case Number: 1:08-CR-261

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- ☐ an offense for which the maximum sentence is life imprisonment or death.
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in _____
- ☐ under 18 U.S.C. §924(c).
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Defendant is a 22-year-old who was born in Mexico. He told the Pretrial Services office that he became a naturalized citizen 7 to 8 years ago. The government believes he is still a Mexican citizen and he has offered nothing to contradict that assertion. He has been unemployed the past year and has no assets.

The evidence indicates defendant has been an active gang member with the Gangster Disciples, and the SUR 13 Gang in Holland, Michigan. (continued on attachment)

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by clear and convincing evidence that no condition or combination of conditions will assure the safety of the community from further misconduct by the defendant, who has evidenced a clear disregard for court supervision (i.e. probation) in the past.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: November 6, 2008

/s/ Hugh W. Brenneman, Jr.

Signature of Judicial Officer

Hugh W. Brenneman, United States Magistrate Judge

Name and Title of Judicial Officer

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Alternate Findings (B) - (continued)

In April 2007, defendant was convicted of Attempted Criminal Sexual Conduct 3rd Degree (Incapacitated Victim) and served a period of time in jail. Since that time he has been on probation, during which he has been convicted of Retail Fraud 2nd and Resisting and Obstructing a Police Officer. His probation has been repeatedly violated, apparently for this misconduct, and for ongoing gang affiliation. The two present federal charges also occurred while he was on probation. The most recent gang affiliation, which is prohibited while he is on probation, occurred on October 26, 2008.

In regard to the present federal charges, defendant admits stealing a 7.62 semi-automatic rifle from his girlfriend's home which he gave to a gang leader. It is believed this gang has been involved in drive-by shootings in the Holland, Michigan area.

Defendant has also admitted to the use of alcohol which is prohibited while he is on probation.

Part II - Written Statement of Reasons for Detention - (continued)